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Nebraska Retirement Systems Committee
March 01, 2011

[LB679 LB680]

The Committee on Nebraska Retirement Systems met at 12:10 p.m. on Tuesday, March 1, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB679 and LB680. Senators present: Jeremy Nordquist, Chairperson; LeRoy Louden, Vice Chairperson; Lavon Heidemann; Russ Karpisek; Heath Mello; and Dave Pankonin. Senators absent: None.

SENATOR NORDQUIST: Thank you for joining us today for the Retirement Systems Committee hearing. My name is Jeremy Nordquist. I represent District 7 in downtown and south Omaha. We're hearing two bills today: LB679 and LB680. Okay, just a couple of minutes. I'll just go through this stuff and then we'll go ahead. Please be sure to silence your cell phones. Our committee staff, to my left, is Kate Allen our legal counsel, to my far right, Trisha Clark our committee clerk. I believe our page's name is Hadley. And I'll start over here with Senator Mello for introduction of senators.

SENATOR MELLO: Senator Heath Mello, District 5, south Omaha and Bellevue.

SENATOR LOUDEN: LeRoy Louden, District 49.

SENATOR PANKONIN: Dave Pankonin, District 2.

SENATOR HEIDEMANN: Lavon Heidemann, District 1.

SENATOR NORDQUIST: All right. If you are going to testify, please fill out a sheet at the back table and put it in the box by the committee clerk and sign the sheet if you want to state your support, opposition or...to one of the bills. Senator Heidemann, are you ready to roll? All right. We'll begin with the hearing. We'll hear these two bills together, LB679 and LB680. Senator Heidemann will open and then we'll take proponent testimony, opponent testimony, followed by neutral testimony.

SENATOR HEIDEMANN: Senator Nordquist and members of the Nebraska Retirement Systems Committee, my name is Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n, representing District 1 in the southeast corner of the state. I'm here today to introduce LB679 and LB680. I will briefly explain each bill and then give you some general comments pertaining to both bills. Under LB679, all new judges and State Patrol members hired after July 1, 2011 would become members of the state Employees Retirement Systems which is in the state's Cash Balance Plan instead of the current Judges and State Patrol Defined Benefit plans. As members of the state Cash Balance plan, new judges and patrol employees would pay the same contribution rate as current state employees, which is 4.8 percent, and the state would match these rates at the existing rate of 156 percent. Under LB679 the state employee will match the new judges who become members of the state Employees Retirement Systems which will be

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funded by an unspecified fee amount on all documents filed with the various courts. Current members of the Judges and Nebraska State Patrol Defined Benefit plans who remain members and retain all rights and benefits. The contribution rates for those members will remain unchanged. LB680 creates the School Employees Cash Balance plan for new school employees hired after July 1, 2011. The provisions of the School Employees Cash Balance plan are similar to the state Employee Cash Balance plan. Member contribution rates are set at 4.8 percent of compensation with an employer school district match of 156 percent. The contribution rates are identical to the employee/employer contribution rates under the state employee retirement plan. Under LB680, School Employee Cash Balance plan members are assured an interest credit rate of the greater of 5 percent or the applicable federal midterm rate plus 1.5 percent, the same benefit provided to state employees in the State Employee's Cash Balance plan. The bill provides that school employee members would vest after five years of service, which is the same as the current vesting period under the School Employees Retirement Act. Current members of the School Employees Retirement Defined Benefit plan retain all rights and benefits and continue existing contribution rates as specified in the School Employees Retirement Act. I have introduced LB679 and LB680 because I believe the cost for Nebraska defined benefit plans are unsustainable. Nationwide states are struggling with over \$1 trillion in unfunded public pension obligations. Although Nebraska has a long tradition of making annual payments for pension systems at the current...at the levels recommended by the actuary, Nebraska is facing enormous unfunded pension liabilities in the coming years. Significant investment losses during 2008, due to the tremendous downturn in the stock market, resulted in a \$2.1 billion loss in the market access of the defined benefit plans in Nebraska, a decline of 27.8 percent. The state General Fund is responsible for financing any actuarial shortfalls in defined benefit plans, which includes the judges, State Patrol and school employees plans. Over \$1 billion in investment losses from 2008 will be reflected in the pension funding obligations over the upcoming years, beginning this fiscal year when the high investment returns from the previous years drop out of the 5-year submitting period. The Nebraska Supreme Court has determined that pension benefits are contractual rights protected under the federal and state constitutions that are vested upon the acceptance and commencement of employment. Therefore, pension benefits for current members of the defined benefit plans may not be eliminated or reduced. As a result, the legislative options reducing funding obligations in the short-term are limited. If the actuary determines funding needs exist then the Legislature has the following options in meeting the immediate funding obligation: fund the obligation with budgetary expenditures paid out of the General Fund revenues; number two, increase the contribution rate paid by the employees in the plan; number three, increase the contribution rate paid by the employer; or, number four, a combination of the above options. I believe it is time for the state of Nebraska to examine alternatives to the defined benefit plans given the limited options we have to eliminate or reduce benefits for the current defined benefit plan members. LB679 and LB680 give us that opportunity to explore these options. It is my intent that these bills are studied over the interim so

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that we have an opportunity to work with the actuary to determine the cost of converting the defined benefit plans to cash balance plans and to look at other tiered options for each of the defined benefit plans. If you have any questions, I'd try to...be happy to answer them and hopefully we'll be able to accommodate that. [LB679 LB680]

SENATOR NORDQUIST: Thank you, Senator Heidemann. Any questions from the committee? I have just a quick one on...for the State Patrol, they do not participate in Social Security right now. Do you know under LB679 would they, do you know how that would work? [LB679 LB680]

SENATOR HEIDEMANN: I don't believe, that is something that actually has come up that will be something that we, as a committee, would have to discuss. [LB679 LB680]

SENATOR NORDQUIST: Okay. Any other questions? Senator Louden. [LB679 LB680]

SENATOR LOUDEN: Yes. Thank you, Senator Nordquist. Senator Heidemann, where the State Patrol doesn't participate in Social Security and I think they have a retirement age of, what, 55 or someplace like that, if they were participating in Social Security, that would create a problem, wouldn't it, because now some of those younger people don't get retirement age until 67. So how would you bridge that, from 55 to 67 if you have a separate plan that includes Social Security? [LB679 LB680]

SENATOR HEIDEMANN: That would be up to something we would have to look at and talk about and try to figure out. This is definitely a work in progress, without a doubt. And where the committee had...goes with this is going to be up to the committee. This is...these two bills were introduced for discussion points to at least talk about it. We in Nebraska have done very well with our defined benefit plans. But I still believe that there should be a discussion had. [LB679 LB680]

SENATOR LOUDEN: Okay, thank you. [LB679 LB680]

SENATOR HEIDEMANN: I mean, if we want to move forward with something, there would have to be a lot of work to be done. [LB679 LB680]

SENATOR NORDQUIST: Senator Mello. [LB679 LB680]

SENATOR MELLO: Thank you, Chairman Nordquist. And, I guess, Senator Heidemann, a follow up on Senator Louden's question. If it wasn't for the financial collapse of 2008, do you think you would have introduced these bills? Would we be in the same position we are today discussing LB679 and LB680 if it wasn't for 2008? [LB679 LB680]

SENATOR HEIDEMANN: We've had a lot of discussions in 2011 because of budgetary

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overall. We've had...we're looking for priorities in the state. I believe that our pension funds are a priority. But in the long-term I really have to think that this state and this country needs to look at the cost of defined benefit plans and the unfunded liabilities that are out there. I fear not only for the states and this country as a whole, but you really think about if we're doing something unsustainable, is that the best for the people that are getting the pensions? I don't think that we're that shortsighted that we want to bankrupt people down the road because of a short-term obligation, long-term obligations, that's hurting us in the short run, excuse me. [LB679 LB680]

SENATOR MELLO: I'll leave it at that. Thank you. [LB679 LB680]

SENATOR NORDQUIST: Any additional questions? Thank you. [LB679 LB680]

SENATOR HEIDEMANN: I'm going to waive closing in the matter of time. Thank you. [LB679 LB680]

SENATOR NORDQUIST: Okay, great, thank you. I will note that, Senator. Russ Karpisek from District 32 has joined us. We'll take proponent testimony on both LB679 and LB680. Any proponent testimony? Seeing none, we will move on to opponent testimony on LB679 and LB680. [LB679 LB680]

ROB OTTE: Senator Nordquist, members of the committee, my name is Rob Otte, I'm a district court judge for the Third Judicial District, that's here in Lancaster County. I'm here on LB679 to oppose that change. And that would change the retirement benefit from a defined benefit plan to a defined contribution plan. This bill doesn't affect me, I've already been appointed. And so I'm here to testify really about what we're looking at with the judicial system. And there's some argument right now that public sector workers might be paid more than their private sector counterparts. I can't address that and that isn't going to make any difference to me one way or the other about that argument. What I can tell you is that most, if not all, of the district court judges have made a financial sacrifice to provide public service in the judicial branch. There are a lot of reasons, as you would know, there are a lot of reasons that people give up what they're doing to be part of something that provides service to the public. I can go through that laundry list for you as to maybe why I made that decision. But one of the things I looked at and had to look at kind of hard was reducing my income, leaving a successful law practice that I had built over the course of 27 years, leaving my partners, and leaving the client base that I had built during the course of time. Now we...the judges kid once in a while that we took this job so that we could have Arbor Day off. That hasn't proven true (laughter) quite yet for me, but I look forward to it in the future. But one of the things that I did look at and when my wife and I looked at what our finances would look like and looked at how judges were paid, we looked at the benefit plan. We looked at health insurance, we looked at all those sorts of things because it is a package. And all I can say to you is one of the factors, and a significant factor in why I was willing to leave my

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career, my clients and the law practice that I had built over that period of time was partly because of the benefit plan that it offered for me and my wife long-term. You have to remember, too, the judges maybe are in a little different situation than a lot of employees that may be subject to the same kind of plan. Let me use an example. In some ways an employee that comes into employment early on in their career, whether it be a teacher or State Patrol or anybody like that, they are starting their career and have a long time to really build in that plan. Judges, on the other hand, are just the opposite. Generally, you're trying to find a judge that's in the maybe the last half, last third of his or her career because that's when you get the experience and the talent and somebody that's committed to the judicial branch. I know of no district court judge that would be earning less money if they were still in private practice than they make as a judge. And while most general practicing lawyers aren't making gobs and gobs of money, despite what you read in the newspaper sometimes, they are making a better living, they're making more money than they get paid as a judge. But they've made a commitment like you all have made a commitment to do those sorts of things because they're at the part of their career where they can go on and maybe make a little bit more money, but this offers some occasion to serve the public and to serve lawyers and to do those sorts of things. I think you want to consider that there is, at least for district court judges, there is a few more than 50 total in the state. Those positions are really important for a lot of different reasons that I won't go into, unless you want to ask some questions. I think we want to encourage judges, and I'll say like me, that are 50-some odd years old, I know that's hard to believe, (laughter) but encourage judges that at the middle, end of their career, their prime money-earning years as a lawyer to go into the profession of being a judge. Like I said, when my wife and I looked at ending my practice one of the things that we considered was how the benefits were structured. And I think that for us to continue to attract good judges in the future, to have, when the judicial nominating committee looks at judges, to have a number of judges that could be sent to the Governor for appointment, that's really important to the state and I would respectfully suggest maybe more important than the few pennies the state might save by juggling the plan around. May not be true for others, but for judges that makes a significant difference. So I urge you to reject LB679. And I would be open to any questions that you might have. [LB679 LB680]

SENATOR NORDQUIST: Thank you. And thank you for joining us, Judge Otte. Any questions from the committee? Senator Karpisek. [LB679 LB680]

SENATOR KARPISEK: Thank you, Senator Nordquist. Judge Otte, thank you for being here. The problem we are running into, though, is how do we fund these things? And I'm going to be honest, I've only been here, this is my fifth year, but judges have been the last ones that want to come to the table and help contribute more because it's in state statute that they don't have to. It's been kind of a tough pull. [LB679 LB680]

ROB OTTE: And the question is? [LB679 LB680]

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SENATOR KARPISEK: The question is, how do we keep funding this? [LB679 LB680]

ROB OTTE: Well, again respectfully the judges, I think, stepped up and made an additional contribution or additional percentage. I mean, we negotiated that. But I think the real issue is, are you going to be longsighted or shortsighted with judges because there's a really small number. And while I think that it's important that we all have our financial pictures, our budget pictures in place, the state needs to identify those places where it makes a difference to spend that kind of money. Now I don't know all the funding mechanisms, I don't know that. What I do know is what I said and what attracted me partly to being a judge was the ability to have this kind of benefit plan. Does it cost the state maybe a little bit more? I don't know the numbers. What I do know is that's a piece of what attracts lawyers to jump out of their life and come to be a judge. [LB679 LB680]

SENATOR KARPISEK: And I agree, it is a good benefit. I would just like you to come in when we try to get our salaries raised with the same exact argument. (Laugh) [LB679 LB680]

ROB OTTE: Yeah. Yeah, I'd join you in the protest. I mean, you know what it's like to do public service. And you all come from different backgrounds. The judges, you can look at most of their backgrounds or all of their backgrounds and say, okay, here's somebody that's coming in again late in their career. What are we going to do to encourage lawyers to do that? And that's one piece that makes a difference. [LB679 LB680]

SENATOR KARPISEK: And I think part of it is that it's lawyers and it's troopers and then the teachers. So it's not all the same thing, but you're dealing with a lot of different people. [LB679 LB680]

ROB OTTE: Yeah, unfortunately, you know, there's groups that get cast into the same basket and maybe there is some differences there in how you analyze that. Yeah. [LB679 LB680]

SENATOR KARPISEK: Yep. Thank you, Judge. Thank you, Senator Nordquist. [LB679 LB680]

ROB OTTE: All right. Any other questions? [LB679 LB680]

SENATOR NORDQUIST: Yes, thank you. Any questions? Seeing none, thank you. [LB679 LB680]

ROB OTTE: All right, thank you. [LB679 LB680]

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SENATOR NORDQUIST: Next opponent testifier. And when you come up, if you would, if you're testifying on one or the other, please go ahead and state that or both. Thank you. [LB679 LB680]

JUDY BEUTLER: Good afternoon, Chairman Nordquist and committee members. My name is Judy Beutler, B-e-u-t-l-e-r. I'm deputy state court administrator and I am here to testify in opposition to LB679. I'll be very brief because Judge Otte has said everything that I was going to say, and that is that we want to continue to have the public benefit from the experience that attorneys bring after several years in a law firm. It is a sacrifice. I know public service is a sacrifice, I know that firsthand. But we don't want to discourage good attorneys from coming forward and putting their name up for a judgeship. So thank you for your consideration and time. [LB679 LB680]

SENATOR NORDQUIST: Thank you. Any questions? Seeing none, thanks. Next opponent testifier. [LB679 LB680]

KORBY GILBERTSON: Good afternoon, Chairman Nordquist, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the State Troopers Association of Nebraska in opposition to LB679. I'm guessing I probably don't even need to say why. Senator Nordquist touched on one of the main issues that was brought up during the discussion of this legislation, which is the Social Security issue. Secondly, I want to address just a few things. Obviously, the troopers, as you all know, have worked very hard to come to the table every time we've needed an increase, have not blinked when the actuary has said how much we need to go up, we've covered it even though not always happily, but we've come to the table and done it. Secondly, this is something that is...the retirement plan is something that is definitely used as a recruiting tool for getting people to join the State Patrol. The Patrol loses members, I wouldn't say frequently but often to other agencies who have better retirement benefits and pay. And so we have to look at the whole package, I guess, is what I'm saying. Secondly, when we're looking at cutbacks, all of you probably know there was another troop...another group that went through the training academy last year. Rumor is that most of those people won't have a job after this year, which means that we're still at numbers in the State Patrol where we were in 1980 or the early eighties and going down now below that number. So it's very concerning to the people out on the road and doing their jobs that every time they turn around it seems that the Legislature is finding new duties to instill upon them at the State Patrol but we're not giving them a lot more to work with. And I'm also, some of you probably know, the recent contract negotiations that have gone on with the State Patrol and the administration. There was a deal reached, obviously, which was significantly below what the Patrol side had come in with in the beginning of the negotiations. So these issues all weigh very heavily on the board of STAN when they're talking to the membership and trying to keep morale up and work with people. I know that this is going to be part of a study, but I hope that we look at

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other alternatives, such as alternative funding sources and maybe perhaps looking at some benefit changes if there is a long-term solution. This isn't the first time since I've been doing this that we've had big...this is the biggest downward spiral we've seen but not the only one. And we have bounced back and seen what has happened. And we are hopeful that the same will happen now. Be happy to answer any questions. [LB679 LB680]

SENATOR NORDQUIST: All right. Thank you, Korby. Senator Pankonin. [LB679 LB680]

SENATOR PANKONIN: Thank you, Senator Nordquist. Korby, on the Social Security issue, obviously, I understand it and whatever. My hunch is, and maybe you can help me with this, is that many Patrol, the average retirement age of someone that has finished their career and is not disabled is what? Is it 55 or... [LB679 LB680]

KORBY GILBERTSON: Fifty-five, 60, yeah. [LB679 LB680]

SENATOR PANKONIN: My assumption is that most of those people go out and start another career? [LB679 LB680]

KORBY GILBERTSON: I don't know the statistics on that. You'd...I think it would probably be safe to assume that they at least take...I don't know if they would necessarily start a new career or if they would spin off and do some other jobs, I'd guess. Kind of hard to start... [LB679 LB680]

SENATOR PANKONIN: Well, my assumption is that it is happening. And my comment is that because of the way Social Security is designed, that even a few years will give you the minimum benefits. So I think there is probably Social Security benefits that are accruing to those folks by the time they reach 66 or 67, it's not as big as it would have been had their whole career, but I think a lot of them benefit from that. Although, you know, we do need to take that into account. Your comment about we've had these times before and we've bounced back, I do think it's different this time. I think it's different for two reasons. The numbers, as they get bigger, is more of a problem. But as we've seen throughout the country, I think we're at a seminal time where this whole view has changed from a political and public relation standpoint of there's just too many people like myself that are going to keep working, got to, we don't have these kind of plans. And there's been recent articles about...and quite frankly, the Cash Balance plan is so superior to what I've got as a 401(k) type plan that you have a 5 percent deal. And that people out there, the general public, the vast majority of them...there has been recent articles about 401(k)s and people are...only one in four people even adequately have a chance at a 401(k) that's adequate. So I think we're seeing that across the country this whole thing has changed, the outlook, because the rest of the public doesn't have it, it's over. And I don't think it's coming back. So I think there is something that we've got to

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realize, there's a change here and it's a big one, it's a big shift. [LB679 LB680]

KORBY GILBERTSON: And I think it will be interesting to see what the differences in funding to maintain...I'm concerned that when you have the group right now, we're not adding any new troopers to come in and help pay for the increased costs of the benefits. So if you have this group that you're going to have to keep those benefits for, you have the new troopers, which if there ever are any coming on, we hope so, they change to another plan. You have people that will be retiring at a fairly early age. I'm guessing it's going to cost a lot of money for that small amount of people to maintain that rather than just maintaining the defined benefit plan. And one other comment on starting a new career, you know, I know friends that have, because of the economy, lost jobs and tried to go out and find another job, it's not always easy to start a new career at age 55. So I think assuming that they all go out and make money hand over fist in some type of new career would be hopeful at best. And once again, we want to be able to attract the most talented law enforcement people to come be a part of our State Patrol. If we don't have benefits or a total package that will attract those type of people, we will not have a good State Patrol. And I think that would be a horrible thing to happen for the state. [LB679 LB680]

SENATOR PANKONIN: Thank you. [LB679 LB680]

SENATOR NORDQUIST: Senator Louden. [LB679 LB680]

SENATOR LOUDEN: Yes, thank you, Senator Nordquist. Korby, I understand then the way you testify you're satisfied with the status quo of the retirement plan that the State Troopers have now. [LB679 LB680]

KORBY GILBERTSON: I think as I testified on the bills that we've had before during this session, the troopers are constantly looking at other alternatives trying to find, like I said, we have a bill in front of Revenue to try to find an alternative funding source to help alleviate some of the General Fund contributions that need to be made. They don't, trust me, I get calls all the time saying, we...good Lord, we're going to have to put in nearly 20 percent of our paycheck into retirement. I have to remind them, you don't put money into Social Security, so take 7 percent off that immediately and then look at the money we're putting in there. Then is it really that unreasonable? I have to...I make arguments to them all the time. I don't know if status quo is the answer. I just think there might be some other alternatives we need to look at rather than eliminating the plan. [LB679 LB680]

SENATOR LOUDEN: But anyway, you particularly don't want to go into Social Security with part of your plan? [LB679 LB680]

KORBY GILBERTSON: I don't think they can until after they have retired. [LB679

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SENATOR LOUDEN: Okay,... [LB679 LB680]

KORBY GILBERTSON: It's not an option for them. [LB679 LB680]

SENATOR LOUDEN: ...because Social Security is kind of a moving target anymore. I mean, they've changed that. And some of your younger troopers go in with Social Security and by the time they get to retirement age it might be an altogether different picture there. And they have less control because that's a federal program. [LB679 LB680]

KORBY GILBERTSON: I don't know if they are even eligible to get into Social Security now. I can double check that, but I don't think they can. [LB679 LB680]

SENATOR LOUDEN: Okay. [LB679 LB680]

KORBY GILBERTSON: And I don't think that's just because of state law, but I could be wrong. [LB679 LB680]

SENATOR LOUDEN: So in other words then, if we do anything on their plan it will be to either try to find alternative funding methods or something like that. But that isn't part of the discussion then, Social Security for them as they are, because as I pointed out, when they retire at age 55, why, Social Security, you get a discount on your benefits if you don't go. And now I think it's, what, 66 or 67 or wherever, I mean, it's moving up. But anyway, that is the gist of it is to find an alternative funding process, if possible. [LB679 LB680]

KORBY GILBERTSON: Yeah, and I think that's why, when we got the original numbers from the actuary this year it was anticipated that each...that we would go up 4 percent, 2 percent on each side. Then the administration said if we...the numbers that they looked at in the out-biennium is if we went up 3 percent on both sides for 2 years that should take care of all of the smoothed losses. And we should be able to drop back down to 16 then. So that is why...so we are trying to look forward and make sure that we take care of things as we move ahead. But as you all know, we deal with this every year (laugh) because it's a moving target. [LB679 LB680]

SENATOR LOUDEN: What effect would hiring some new troopers have on that retirement plan? Say you had an influx of ten more troopers into that retirement plan. That would make quite a difference, wouldn't it on... [LB679 LB680]

KORBY GILBERTSON: I think, actuarially, I think the first year, and I don't totally understand how this works, they actually cost the plan a little bit of money the first year.

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But then, obviously, any time you have more people paying into the plan, it spreads out the cost of providing those benefits. And that's why when you look at the teachers and they had a huge deficit, it required them to have less than 1 percent increase. Well, obviously, with such a small pool in the troopers plan, a pretty small increase or small deficit requires a huge increase in contribution rates. [LB679 LB680]

SENATOR LOUDEN: Okay, thank you. [LB679 LB680]

SENATOR NORDQUIST: You mentioned alternative funding methods. Has there been a hearing on that bill that was introduced? Is there any status on that? [LB679 LB680]

KORBY GILBERTSON: It's resting peacefully in committee, I think, would probably (laugh) be the... [LB679 LB680]

SENATOR NORDQUIST: Okay, all right. All right, any additional questions? Seeing none, thank you. [LB679 LB680]

KORBY GILBERTSON: Thank you. [LB679 LB680]

SENATOR NORDQUIST: Additional opponent testimony on either LB679 or LB680? [LB679 LB680]

KAREN KILGARIN: (Exhibits 1-3) Good afternoon, Senator Nordquist and members of the Retirement Committee. I'm Karen Kilgarin testifying in opposition to LB680 on behalf of the 28,000 members of the Nebraska State Education Association. NSEA believes that LB680 would undermine the current policy of ensuring plan solvency by creating a new tier of plan members under a different retirement system. Recent research shows that a defined benefit plan is more cost-effective for government and better meets the retirement income needs of employees. Historically, defined benefit plans have earned higher investment returns and paid lower investment management fees, on average, than defined contribution plans. Now some states and districts across the country have tried defined contribution plans, but they quickly learned that employees didn't have what they needed to afford to retire or that returns for the defined benefit plan were actually higher than those of the defined contribution plan. For example, in West Virginia, older teachers transferred into a new defined contribution plan, back in 1991, when it was offered but then they had such low account balances that they couldn't afford to retire. As a result, the West Virginia Legislature reopened the defined benefit plan and allowed participants to transfer back into the plan. And the vast majority, of course, chose to do that. According to the study done by West Virginia's Consolidated Public Retirement Board, the average defined contribution account balance was just \$33,944, and only a handful of teachers over the age of 60 had amassed more than \$100,000 in their accounts, which is not a very large amount to live on for the rest of your life. Their investment returns were insufficient and fell well short of what was

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needed to secure a decent income upon retirement. Now here at home in Nebraska, the state has operated defined benefit plans for school employees, judges and the State Patrol, as you know, and also defined contribution plans for state and county employees. In 2000, Senator Nordquist may recall this, the state reviewed its two defined contribution plans and found that between 1983 and 1999 the defined contribution plans investment returns averaged only 6 percent compared with 11 percent for the state's defined benefit plans. The review concluded that the defined benefit plans provided a 60 to 70 percent income replacement for employees and the two defined contribution plans provided an income replacement of only 25 or 30 percent. And this was despite the fact that both employee and employers had contributed 11.50 percent of pay each year in the defined contribution plan. The defined contribution plans low returns were the result of investment decisions that many participants had made despite a comprehensive investment education program. So as you consider the money it takes to fund these pension plans, it's important to also factor in the economic benefits for the state and local economies. Pension benefits are vital, they are a continuous source of spending in every city and community and main street across Nebraska. As those retirement payments are spent they create a ripple effect through salaries paid, business profits and taxes collected. Pensions also keep our elderly vulnerable citizens from living in poverty and relying on public assistance. For all of these reasons, NSEA opposes LB680 and asks the committee to indefinitely postpone the bill. I want to thank you for your time and your work on these important issues. Thank you. [LB679 LB680]

SENATOR NORDQUIST: Thank you, Karen. I see there's...you had some testimony here on LB679 as well. [LB679 LB680]

KAREN KILGARIN: Yes. [LB679 LB680]

SENATOR NORDQUIST: Do you want us to enter it in opposition? [LB679 LB680]

KAREN KILGARIN: Please, thank you. [LB679 LB680]

SENATOR NORDQUIST: Okay. Any questions from the committee? Seeing none, thank you. [LB679 LB680]

DON WESELY: Chairman Nordquist, members of the Retirement Committee, my name is Don Wesely, W-e-s-e-l-y, representing the County Judges Association here in opposition to LB679. Judge Otte pretty well summarized the issues that we have. Senator Karpisek, you talked about some of the concerns that you expressed about the constitution, you mentioned statutory protections in terms of salary. It's actually a constitutional protection. And it again is there to protect from any sort of influence toward judges and it's a protection of the public really through the protection of the judges to make sure they're independent. And that gets back to again adequate

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compensation, adequate benefits. These individuals hold a lot of power and influence in their hands. We want to make sure that they're compensated and we get the best possible people serving in these positions. The other thing I'd mention is the judges plan right now is in pretty good shape. And we have tried to work together in the last couple of years to make some adjustments to make that possible. And so we believe that the plan is working. And the judges should retain that benefit in the future. With that, again, we oppose the bill. [LB679 LB680]

SENATOR NORDQUIST: Thank you, Mr. Wesely. Any questions from the committee? Senator Karpisek. [LB679 LB680]

SENATOR KARPISEK: Thank you, Senator Nordquist. Thank you, Senator. And you are correct, I was wrong, it is constitutional. And they did work together. But I will say that they went dragging and screaming. And, I guess, some of the e-mails I got really left a bad taste in my mouth because it wasn't that it was the public trust, it was, it's in the constitution and if you don't like it, that's just too dang bad. And I did remind them that I know how to change the constitution also. So I just want to get that out, that I'm still a little bit upset about that whole deal. We're in a tough spot. Hey, the judges have a tough job, I understand it, and I want the best people there too. But when everybody needs to come and sit down at the table, I think we need to. And, yes, they did. It took, I think, bringing the Chief of the Supreme Court in and reminding him that there was...oh, yeah, if we need you to next year we'll be with you. And anyway, it was not easy, it wasn't pretty and it wasn't a lot of fun. And I'm afraid the next time it comes up I know I can just about guess what we're going to hear so. [LB679 LB680]

DON WESELY: No, I remember it and it wasn't very pleasant. But we did work through it and will continue to work through it. [LB679 LB680]

SENATOR KARPISEK: Thank you, Senator. Thank you, Senator Nordquist. [LB679 LB680]

SENATOR NORDQUIST: Thank you. [LB679 LB680]

DON WESELY: Thank you. [LB679 LB680]

SENATOR NORDQUIST: Any additional questions? Seeing none, thank you. Any additional opponent testimony? [LB679 LB680]

BILL MUELLER: I will make this very quick. Members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in opposition to LB679. As Judge Otte said earlier, it does make a difference what the retirement benefits are to a lawyer who's considering whether he or she is going to put his or her name in to be a judge. We have a great judiciary in

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Nebraska, we want to keep it that way. And I've talked to a lot of lawyers who were looking at whether they should apply for a judgeship. And I can assure you, every one of those discussions has centered around primarily the retirement benefits. Judges...lawyers become judges later in their career, the retirement benefit does make a difference. And as you all know, the state side of the retirement contribution for judges is paid by the \$6 retirement court costs that's added onto filing fees. The bar supports that. The bar has testified in support of a bill in the Judiciary Committee to actually raise court costs. When you look at the states around us, we are low, there is room to do that. The bar supported that bill when it was heard by the Judiciary Committee because of the budget reductions being looked at by the Appropriations Committee. And we would continue to support that bill. We support judges retirement. We support the defined benefit plan and would hope that the committee would retain it. Be happy to answer any questions you may have. [LB679 LB680]

SENATOR NORDQUIST: Thank you, Mr. Mueller. Any questions from the committee? Seeing none, thank you. [LB679 LB680]

BILL MUELLER: Thank you. [LB679 LB680]

SENATOR NORDQUIST: Any additional opponent testimony? Seeing none, any neutral testimony on LB679 or LB680? [LB679 LB680]

JOHN BONAIUTO: (Exhibit 4) Senator Nordquist, members of the committee, John, J-o-h-n, Bonaiuto, B-o-n-a-i-u-t-o, executive director of Nebraska Association of School Boards. I thought there would be ample opponent testimony, so I thought I would try a different approach. And I eventually will have some things to hand out here. And basically, I appreciate Senator Heidemann raising the issue to have a discussion. It's the elephant in the room and you need to have, I think, this discussion because it's important to have an objective look. From an employers perspective, school boards look at the philosophy of how their employees view being in the public sector versus the private sector. You always hear about those comparisons. Well, I think the employees in the public sector, they think about salary, but they think more about what they do. And what they do is who they are in many respects. And the salary piece is something that is pretty stable and consistent. If you look at how teachers are paid on salary schedules, everything is in a little box and it doesn't take a lot of imagination to figure out where you're going to be down the road. The insurance program that educators are part of has been very stable. They've been with the same company and part of the same program for years, 40 or more years, and they don't want to give a lot of thought to that. And it's just there, it's good, they can count on it. I think a retirement system is the same way, it's an important piece of that total compensation that they rely on but they don't give it a lot of thought. But they know that down the road somewhere it's going to be there for them and that someone has done a great job of managing it. And so that's, you know, an important thing to the employers as they look at attracting people to the education

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field. So the reason I'm here is because I think having this discussion is important. And you've got defined benefit on one side, you've got defined contribution on the other side, and there's a big gap between. It's...you know, I don't know that we're at a point right now we can say either/or and I don't know that there's a silver bullet here. And so looking at why you might do some things differently and what would make the most sense and have the best outcome for the state and the participants I think is critical. I will share with you some research that is probably timely for this discussion and it's not too deep. As far as thick, it is research that was done by Boston...university of...Boston College. And actually the topic is why some states have introduced this legislation. So it talks about the real motivation to have these discussions that we're having right now. And you could probably figure out what some of the information would look at. And the outcome is that there is no right or wrong answer. You have to find your path. And so I would really encourage you to get good information over the interim, have this discussion, not just for next year but I'm thinking down the road. And there's a rumor that at the end of the 2012 session that there is going to be a large number of senators that will be finishing their service as senators. So we'll need to have that information for future discussions and where we're at with this issue. So I think having an objective look at what is best for the participants and having that discussion is healthy for all parties concerned. With that, I'm going to conclude my testimony. [LB679 LB680]

SENATOR NORDQUIST: Okay, thank you, Mr. Bonaiuto. Any questions from the committee? Seeing none, thank you. [LB679 LB680]

JOHN BONAIUTO: Thank you. [LB679 LB680]

SENATOR NORDQUIST: Any additional neutral testimony? Seeing none, Senator Heidemann has waived closing. That will conclude the hearing on both LB679 and LB680. Thank you. [LB679 LB680]